

**IN THE MATTER OF
JOSEPH E. MECHANIK, D.P.M.**

PROBATED SUSPENSION of

LICENSE No. 1326

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**BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS**

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Joseph E. Mechanik, DPM. By letter dated July 17, 1998, May 30, 2003 and October 27, 2003, the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Mechanik of its intent to investigate complaints, concerns or reports filed against him. Dr. Mechanik was duly notified of the allegations against him. Dr. Mechanik has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Mechanik does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Mechanik understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*. Dr. Mechanik participated in an Informal Consent Hearing on October 2, 2003.

The Board and Dr. Mechanik, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. Mechanik agrees to this Order for the purpose of resolving this proceeding only and without admitting or denying the Findings of Fact and Conclusions of Law set out in this Order. The Board makes the following Findings of Fact and Conclusions of Law, and enters this Order.

FINDINGS OF FACT

1. Dr. Mechanik is licensed as a podiatric physician in the State of Texas (License Number 1326) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. Dr. Mechanik signed an affidavit, as part of his May 1, 1996 Application For Examination For License, before a Notary Public authorizing the Texas State Board of Podiatric Medical Examiners to issue penalties against his license for any violations of the Podiatric Medical Practice Act of Texas and the Board Rules.
3. Complaints were filed against Dr. Mechanik, and he was provided with notice of the complaints and with an opportunity to respond to the complaints and to show compliance with the law.

4. On his Application For Examination For License to practice podiatric medicine in the State of Texas, subscribed and sworn on May 1, 1996, Dr. Mechanik's response to a question was inconsistent with the facts surrounding an event that occurred on August 11, 1989.
5. From November 1998 to October 2003, Dr. Mechanik settled a total of six (6) malpractice lawsuits.
6. Dr. Mechanik served as a "surgical/technical assistant" in conjunction with a partnership with a medical doctor in Houston, TX, when called upon by that medical doctor.
7. From January 2001 to on or about August 2003, Dr. Mechanik engaged in prescribing controlled substances/narcotics (Schedules II, III and IV) as part of his practice located in Houston, TX.

CONCLUSIONS OF LAW

1. Dr. Mechanik is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et. seq., and the associated Rules of the Board, 22 Tex. Administrative Code § 371.1, et. seq.
2. Texas Occupations Code, §202.253(a)(4) provides that, "the board may refuse to issue a license to practice podiatry to a person, for engaging in grossly unprofessional or dishonorable conduct of a character that in the board's opinion is likely to deceive or defraud the public."
3. Texas Occupations Code, §202.253(a)(5) provides that, "the board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
4. Texas Occupations Code, §202.253(a)(14) provides that, "the board may refuse to issue a license to practice podiatry to a person, for willfully making in the application for a license to practice podiatry a material misrepresentation or material untrue statement."
5. Texas Occupations Code, §202.253(a)(16) provides that, "the board may refuse to issue a license to practice podiatry to a person, for failing to practice podiatry in an acceptable manner consistent with public health and welfare."
6. Texas Occupations Code, §202.353(i) provides that, "the board shall review the information relating to a podiatrist against whom three or more malpractice claims have been reported during any five-year period in the same manner as if a complaint against that podiatrist had been made to the board."
7. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
8. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates the Podiatric Medical Practice Act of Texas.
9. 22 Texas Administrative Code §375.2(a) provides: "The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective of the podiatric medical profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and

skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life.”

10. 22 Texas Administrative Code, §376.1(a)(1) provides that, “any podiatric physician who violates any provision of these rules, or any provision of the Act shall be at the discretion of the Board subject to the following penalties: cancellation, suspension, revocation, or probated cancellation, revocation, or suspension of the license to practice podiatric medicine.”

ORDER

1. Dr. Mechanik shall pay a fine of \$2,500.00 (Two Thousand Five Hundred Dollars and no/100) fully due and payable within 60 (sixty) days after the effective date of this Agreed Order.
2. Dr. Mechanik shall sit for and pass the Texas State Board of Podiatric Medical Examiners Jurisprudence Exam, to be taken at a date/time agreed upon by Dr. Mechanik and the Board, but no later than 180 (one hundred-eighty) days after this Order becomes effective.
3. Dr. Mechanik will not act in the capacity of a “surgical/technical assistant” in any “medical” (the field of “medicine” regulated by the Texas State Board of Medical Examiners) procedure, outside the scope of practice for Podiatric Medicine in the State of Texas. Should Dr. Mechanik be called upon to assist in a “medical” procedure by a Medical Doctor (M.D.) or a Doctor of Osteopathic Medicine (D.O.), in the interest of patient welfare, Dr. Mechanik shall request clearance for his participation from the Texas State Board of Podiatric Medical Examiners.
4. Prior to performing any surgical procedures, Dr. Mechanik shall ensure that proper informed consent is discussed with the patient (i.e. identifying the surgical site(s), discussing possible surgical outcomes, discussing risks related to the consented surgical procedure(s), etc.).
5. Dr. Mechanik shall advertise his podiatry practice according to the advertising guidelines set forth by the Texas State Board of Podiatric Medical Examiners.
6. Dr. Mechanik shall comply with all methods of prescribing controlled substances/narcotics as called for by the Texas Department of Public Safety – Prescription Program and United States Drug Enforcement Administration requirements, including but not limited to keeping accurate written records of prescriptions and patient file records.
7. For the years 2004-2008, Dr. Mechanik shall complete an additional ten (10) hours of Continuing Medical Education, in each biennium, in addition to the hours already required by law. The ten (10) hours shall consist of patient/practice risk management, ethics and medical record keeping courses; offered by the Texas Podiatric Medical Association, the Texas Medical Association, or a similar course as approved by the Board.
8. Dr. Mechanik shall permit a Board representative or staff member to periodically enter his place of business and/or the facility at which he previously maintained an office, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a

federal holiday to ensure compliance with this Order. Dr. Mechanik shall be provided with at least three (3) days written notice of such visits, and such visits shall not interfere with the normal operation of Dr. Mechanik's practice.

9. Entry of this Order shall finally resolve any and all pending matters or investigations before the Board, prior to the effective date of this Order.
10. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.
11. If Dr. Mechanik fully complies with the terms of the **Agreed Order**, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.

GENERAL PROVISIONS

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed to be in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et. seq., the Podiatric Medical Practice Act.* and the *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act.*
4. Acknowledgment of Entire Agreement. Dr. Mechanik acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Mechanik has executed this instrument freely and of his own accord.
5. Notice. Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Joseph E. Mechanik, DPM
8876 Gulf Freeway, Suite #559
Houston, TX 77017

Texas State Board of Podiatric Medical Examiners
P.O. Box 12216
Austin, TX 78711-2216
6. Upon approval of this Agreed Order by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, JOSEPH E. MECHANIK, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.

Joseph E. Mechanik
Joseph E. Mechanik

12/22/03
Date

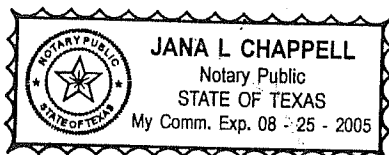
IN THE STATE OF TEXAS §

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COUNTY OF HARRIS §

BEFORE ME, on this day personally appeared Joseph E. Mechanik known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 22nd day of December, 2003.



JANA L. CHAPPELL

(Printed Name of Notary Public)

Jana L. Chappell
Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 13th day of JANUARY, 2004, after a Board vote.

Bradford W. Glass
BRADFORD W. GLASS, D.P.M.
Board President

Allen M. Hymans
Allen M. Hymans
Executive Director